

# EXHIBIT 10

## ESHA RESEARCH SOFTWARE TERMS OF SERVICE AND END USER LICENSE AGREEMENT

The Terms of Service and End User License Agreement ("Agreement") is entered into between ESHA Research, Inc., an Oregon corporation, ("ESHA") and you, the party executing this Agreement ("you" and/or "Licensee").

### RECITALS

ESHA is in the business of developing, maintaining and marketing software and databases used for recipe development, nutritional analysis and labeling. ESHA has developed, and is the sole owner of, various software and database products used for nutritional analysis and labeling purposes ("ESHA Software"). ESHA is providing you with a license to use selected ESHA Software products through a cloud-based hosting application operated by ESHA and/or any third-party hosting vendors, affiliates or contractors, Inc. ("ESHA and/or any third-party hosting vendors, affiliates or contractors,"), which utilizes third party software ("Third Party Software") developed by ESHA and/or any third-party hosting vendors, affiliates or contractors, Microsoft and other third parties ("Third Party Vendors").

You have selected and purchased, in a purchase form or similar document (the "Purchase Agreement"), a license for one or more ESHA Software products bundled with applicable Third-Party Software (collectively, the "Licensed Software"). You have selected in your Purchase Agreement a scope of license for the Licensed Software specifying your access rights, who is authorized to use the Licensed Software, and for what purposes you may use the Licensed Software (the "License Scope"). You have agreed in the Purchase Agreement to be licensed and billed for successive license terms (the "License Term"). The definitions and specifications related to the Licensed Software, License Scope and License Term are set forth in this Agreement. By clicking "Submit" you are: (i) verifying your purchase of a license as set forth in the Purchase Agreement; and (ii) agreeing to all of the terms, conditions, warranties and covenants contained in this Agreement regarding the Licensed Software.

### TERMS

In consideration of the above recitals and the terms, representations, warranties, covenants and conditions below, the parties agree as follows:

1. Grant of License. Subject to the terms and conditions below, ESHA grants to you a limited, nontransferable, nonexclusive license, for the duration of the License Term, to access and use through the Internet the Licensed Software specified in the Purchase Agreement as follows.
  - In the event you have licensed an ESHA software product or application, including but not limited to the Genesis R&D® product suite, Food Processor®, ESHA Security, ESHA Port, Genesis R&D API, or any ESHA licensed product or service tools, you shall have the right to access and use through the internet, for the licensed number of users specified in the Purchase Agreement, the ESHA software product or application together with applicable Third Party hosted service, for the sole purpose of conducting internal nutritional analysis and nutritional product labeling for Licensee's own products or services.
2. Scope of License. You are licensed to allow each individual authorized user established and paid for by Licensee to access and use the applicable Licensed Software, *provided* that no authorized user may share his or her login credentials.

3. **Limitations on License.** Licensee may use the Licensed Software solely for its internal business use by its own employees in the manner licensed in this Agreement. Licensee is *not* licensed to do any of the following: (a) copy, sublicense, rent, lease, lend or otherwise transfer, disclose or publish the Licensed Software (or any portions thereof), or in any manner transfer or assign Licensee's rights under this Agreement without the prior written consent of ESHA; (b) use the Licensed Software for any purpose other than the purposes specifically licensed herein; (c) use the Licensed Software for the benefit of third parties or as part of its own commercially licensed products or services; (d) remove or obscure the ESHA copyright or trademark notices, or those of applicable Third Party Vendors, appearing on or with the Licensed Software; (e) compile the Licensed Software from one form to another or attempt to interfere with, disable, modify, convert, reverse engineer, reverse compile, change or reverse assemble it; (f) compile, extract, strip, mine, harvest or otherwise collect, directly or indirectly, the data from the nutritional database embedded within the Licensed Software; (g) post or transmit on or through the Licensed Software host server any libelous, obscene or otherwise unlawful information of any kind; (h) engage in any conduct involving the Licensed Software or its host server(s) that would constitute a criminal offense or give rise to civil liability under any local, state, federal or other law or regulation; (i) engage in any activities that would interfere with or disrupt use of the Licensed Software or its hosting server(s) by others, including, without limitation, distributing "spam," attempting the unauthorized access to data belonging to third parties, or knowingly introducing, or permitting to be introduced, into or through the server(s) hosting the Licensed Software any worm, virus, Trojan horse or other malware or spyware; or (j) use the Licensed Software or its hosting server(s) for any use in which the failure of the Licensed Software or its hosting server(s) could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
4. **License Fees.** Licensee shall pay ESHA license fees in the amounts, and upon the terms, set forth in the corresponding Sales Agreement "Quote". All fees due shall be stated and paid in U.S. Dollars. The fees set forth in the "Quote" are exclusive of all taxes, levies or duties imposed by taxing authorities, and payment of all applicable federal, state, local and foreign sales and use taxes, ad valorem taxes, value added taxes, tariffs and duties shall be the sole obligation of Licensee.
5. **Maintenance and Updates.** ESHA may automatically update the Licensed Software, including the nutritional database contained therein, with whatever updates it has, in its sole discretion, prepared for commercial release from time to time. You hereby agree to ESHA's automatically, and without prior notice, updating the Licensed Software.

**Ownership, Copyrights.** ESHA is the sole owner of all rights, title and interest in the ESHA Software, including the embedded nutritional database and all customized and derivative works based upon them, and including all copies thereof and all copyright, patent, trademark, trade secret rights and other intellectual property rights embodied therein. The Third-Party Vendors are the sole owners of their respective Third-Party Software products, including all customized and derivative works based upon them, and including all copies thereof and all copyright, patent, trademark, trade secret rights and other intellectual property rights embodied therein. All rights not specifically granted in this Agreement are reserved by ESHA and, as applicable, by its Third-Party Vendors. No implied rights are granted.

**Branding and Attribution.** (a) If the nutrition analysis or reports generated by the application are for public or published commercial purposes (e.g., books, brochures or web pages summarizing the nutritional content) the Licensee will include ESHA's Copyright and Trademark notification (e.g., "Powered by the ESHA Research Nutrient Database©" in the "About" section of the web

site or other similar acknowledgment section of the published material listed at <https://esha.com/nutrition-analysis-attributions/>. Licensee shall not otherwise use ESHA's name or trademarks without ESHA's prior written consent. (b) Licensee agrees to allow its name and/or logo to be included in materials listing ESHA customers.

6. **Licensee's Obligations to Protect the Licensed Software.** As a continuing condition of the licenses granted herein, Licensee covenants to use the Licensed Software only for the purposes set forth in this Agreement and for no other purpose and shall use commercially reasonable efforts to protect the Licensed Software from unauthorized use, reproduction, publication or distribution.
7. **Lawful Use.** Licensee (by and through itself and its authorized users) shall at all times use the Licensed Software in full compliance with all laws and regulations and shall not use the Licensed Software in any manner that ESHA would reasonably find inconsistent with its good business reputation.
8. **Indemnification.** Licensee shall indemnify, defend, and hold ESHA harmless from all claims, demands, liability, costs and expenses, including, without limitation, attorney's fees, arising from or related to Licensee's use of the Licensed Software, provided that ESHA promptly advises Licensee of the existence of, or known threat of, any such claim and reasonably cooperates with Licensee in the defense of any such claim.
9. **Responsibility for Internet Security.** Licensee shall be solely responsible for obtaining and using its own anti-virus, anti-Trojan, anti-malware and internet security software and appliances. ESHA does not warrant that the Licensed Software or the applicable host server(s), or any data viewed from or downloaded from the Licensed Software, will be safe or free of viruses, worms, Trojan programs or other malware or destructive mechanisms. Licensee is solely responsible for using appropriate internet and network security devices and/or software to ensure that no third parties (e.g. hackers) take advantage of the fact that Licensee's computers are connected to the internet or are accessing Licensed Software through the internet.
10. **User Accounts and Security.** Licensee shall promptly provide ESHA with complete and accurate information required to establish a logon identity and password for Licensee's authorized individual users so they may access the Licensed Software. Licensee is solely responsible for maintaining the confidentiality of the user IDs and passwords of its authorized users, and for logging out of Licensee's account at the end of each session. Neither ESHA nor its Third-Party Vendors will be responsible for any losses or damages incurred as a result of an unauthorized use of Licensee's account. Licensee shall notify ESHA immediately of any unauthorized use of Licensee's logon identities or passwords so that ESHA may take appropriate actions.
11. **Minimum Service Protection.** ESHA Cloud Services guarantees 99% uptime over a period of 60 consecutive day's availability of its service provider servers. The following shall not be included in server uptime: (a) server is unavailable due to factors beyond the ESHA service provider's control; (b) server is unavailable due to interruption of service at *Partner*; (c) server unavailable due to maintenance and/or updates (to be done after common business hours or on weekends); and (d) time reasonably required for immediate maintenance as needed to address pressing security threats, potential loss of data or depletion of integrity of the network.
12. **Backing Up Licensee's Data.** ESHA's Cloud Platform, will perform regular full system backups, as well as daily differential backups, of data stored on a host server through your use of Licensed Software. ESHA will maintain a copy of the latest full backup and all interim differential backups performed after the last full backup, on a two-week rotation schedule. ESHA nor any third-party

hosting provider or contractor shall be responsible for maintaining copies of any other backups. Once a full system backup has been performed, ESHA may delete or destroy all copies of previously performed backups. ESHA will make commercially reasonable efforts to maintain data integrity in any backup, but ESHA nor any third-party hosting vendors, affiliates or contractors are responsible to Licensee for loss of data or data integrity so long as ESHA and/or any third-party hosting vendors, affiliates or contractors, has performed its backups in a commercially reasonable manner. Neither ESHA nor any third-party hosting vendors, affiliates or contractors will not maintain copies of data manipulations made by you through your use of the Licensed Software between backups, and ESHA's responsibility for maintaining your data is limited to what is contained in the backups described above.

13. **Return of Licensee's Data.** Following the termination of this Agreement, Licensee may request a copy of their data within (10) days. ESHA and/or any third-party hosting vendors, affiliates or contractors, will retain a copy of your data 30 days to give you an opportunity to verify that all of your data has been delivered if requested. Request for delivery of licensee data must be made within 10 days of agreement termination. Promptly upon your receipt of such data, but in any event within ten (10) days after such receipt, you shall examine and test the returned data as you deem necessary or desirable to verify the receipt of all of your data. You shall promptly notify ESHA in the event you discover any issues with your data, and you shall reasonably cooperate with ESHA and ESHA and/or any third-party hosting vendors, affiliates or contractors, to resolve any identified issues. Unless you notify ESHA of a problem with your data within 10 days following your receipt of it, ESHA or any third-party hosting vendors, affiliates or contractors may erase your data, including all copies or backups, without any further notice to you and without any liability or further obligation to you.
14. **Microsoft Terms.** Licensee acknowledges and agrees that certain components of the Licensed Software, including software, associated media, printed materials and "online" or electronic documentation are provided under a sublicense from Microsoft Corporation (individually and collectively, "Microsoft Products") and that Microsoft shall be a third-party beneficiary of, and may verify compliance with and directly enforce, both the terms of this Agreement and the license terms in this Section 13 as they relate to Microsoft Products:
  - All title and intellectual property rights in and to the Microsoft Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Microsoft Products) are owned by Microsoft or its suppliers. The Microsoft Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Microsoft Products does not transfer any ownership of the Microsoft Products or any intellectual property rights to you. The terms of this Section 13 permanently and irrevocably supersede the terms of any Microsoft End User License Agreement, which may be presented in electronic form during your use of the Licensed Software.
  - In connection with the services provided to you, you may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively, "Redistribution Software"). You may not use, modify, copy, and/or distribute any redistribution software unless you expressly agree to and comply with certain additional terms contained in the services provider use rights ("spur") applicable, which terms must be provided to you. Microsoft does not permit you to use any redistribution software unless you expressly agree to and comply with such additional terms, as provided to you.

- You may not make any copies of the Microsoft Products; provided, however, that you may (a) make one (1) copy of Licensed Software to the extent expressly authorized by ESHA and ESHA and/or any third-party hosting vendors, affiliates or contractors; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Licensed Software and/or Redistribution Software upon termination or cancellation of your Agreement with ESHA, upon notice from ESHA or ESHA and/or any third-party hosting vendors, affiliates or contractors, or upon your transfer of a device containing all or some components of Licensed Software to another person or entity, whichever first occurs. You may not copy any printed materials accompanying the Microsoft Products.
- You may not reverse engineer, decompile, or disassemble the Microsoft Products, except and only to the extent that applicable law, notwithstanding this limitation expressly permits such activity. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Microsoft Products to any third party, and you may not permit any third party to have access to and/or use the functionality of the Microsoft Products.
- Without prejudice to any other rights, ESHA or ESHA and/or any third-party hosting vendors, affiliates or contractors, may terminate your rights to use the Microsoft Products if you fail to comply with these terms and conditions. In the event of termination or cancellation, you must stop using and/or accessing the Microsoft Products, and destroy all copies of the Microsoft Products in your possession, and all of its component parts. Any warranties, liability for damages and remedies, if any, are provided solely by ESHA and/or any third-party hosting vendors, affiliates or contractors, and not by Microsoft or its affiliates or subsidiaries. Any product support for the Microsoft Products is provided to you by ESHA and/or any third-party hosting vendors, affiliates or contractors, and is not provided by Microsoft or its affiliates or subsidiaries.
- The Microsoft products may contain technology that is not fault tolerant and is not designed, manufactured, or intended for use in environments or applications in which the failure of the Microsoft products could lead to death, personal injury, or severe physical, property or environmental damage.
- The Microsoft Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Microsoft Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see: <http://www.microsoft.com/exporting/>
- In addition to any liability you may have to ESHA and/or any third-party hosting vendors, affiliates or contractors, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions. Your use of the Licensed Software is subject to the limitations set forth in this Agreement, in this Section 13, and in the applicable SPURs for such software.

#### 15. Term of Agreement, Termination.

- This Agreement shall become effective upon Licensee's electronic execution of the Agreement, as set forth below. Subject to the termination provisions below, the license

rights granted herein shall remain in effect on in increments specified in your Purchase Agreement.

- ESHA may terminate this Agreement and the licenses granted herein immediately in the event Licensee breaches any term or condition of this Agreement and fails to cure such breach within 10 days following its receipt of written notice thereof. In addition, either party may terminate this Agreement, or the licenses granted herein for its own convenience upon 20 days prior written notice to the other party. For purposes of this provision, ESHA may provide written notice by sending notice to Licensee at the email address set forth in the "ESHA Cloud Registration Form". If the licenses granted under this Agreement expire or terminate, Licensee services will be terminated. Licensee acknowledges and agrees that in the event a license expires or terminates, ESHA may remotely disable or otherwise remove the applicable Licensed Software from Licensee's use without further notice or approval.
- Refund/Partial Term Cancellation/reduction of services policy. ESHA cloud subscriptions are set-up for auto-renewed billing per the time specified in the Purchase Agreement billing period. Cancellation or reduction of the service agreement requires explicit notification from Licensee to ESHA. Requests should be submitted to [processing@esha.com](mailto:processing@esha.com). Requests for cancellation within 30 days following a billing period will be granted, with an incurred \$50.00 handling fee. Requests for termination of service beyond the initial 30 days of a renewed billing agreement cycle will be charged out to the month requested on a monthly cost pro-rated basis.

16. Confidential Information. The Licensed Software (including the nutritional database embedded therein) and all other information ESHA discloses to Licensee in connection with them, shall be considered ESHA's Confidential Information, which ESHA discloses only subject to a license agreement. Licensee agrees that it and its employees, agents and representatives shall: (i) keep ESHA's Confidential Information strictly confidential, and shall not disclose such information to any other person or entity without the express written consent of ESHA; (ii) limit internal disclosure of the Confidential Information solely to its employees, agents and representatives who must be apprised of the Confidential Information to advance the purposes of this Agreement, and only to the extent that they must be apprised for those purposes; (iii) contractually bind all such persons to honor the confidentiality and use restrictions imposed upon the Licensee; (iv) use the Confidential Information solely for the purpose of using the Licensed Software as licensed by ESHA in this Agreement; and (v) upon demand, immediately surrender to ESHA the Confidential Information and all notes, records, documentation, models, software, databases and other items or materials containing such Confidential Information. Confidential Information shall not include: (i) information that is in, or enters into, general public access without breach of this Agreement through no fault of Licensee; (ii) information Licensee was demonstrably in possession of prior to receiving it from ESHA; (iii) information Licensee can demonstrate was developed by Licensee independently of, and with neither use of nor reference to, ESHA's Confidential Information; and (iv) information Licensee receives from a third party without restriction on disclosure and without breach by such third party of a nondisclosure obligation. Notwithstanding the above, Licensee understands and acknowledges that the public availability of, or Licensee's possession of, any particular nutritional data shall not in any manner reduce the confidentiality of the nutritional database embedded within the Licensed Software as a confidential and proprietary collection of data.

17. Warranty of Original Development. ESHA warrants that the ESHA Software is, and will be, of original development by ESHA.

18. Limitation of Warranties. Other than the warranties expressly set forth in this Agreement, ESHA makes no other warranties, express or implied, and the Licensed Software shall be provided on an "as is" and "as available" basis. ESHA specifically disclaims, to the fullest extent allowed by law, all implied warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose and any warranties under the Uniform Computer Informational Transactions Act, as may be adopted by any jurisdiction from time to time.
19. Limitation of Remedies. In no event shall ESHA be liable to Licensee for any indirect, incidental, special, punitive or consequential damages or lost profits arising out of or related to Licensee's use of the Licensed Software, even if ESHA has been advised of the possibility thereof. In particular, ESHA shall not be liable for the loss of information arising from the use of, or inability to use, the Licensed Software. ESHA's liability to Licensee, if any, whether arising under contract or based upon a claim of strict liability, negligence or some other tort or statutory claim, shall in no event exceed the total of the payments made to ESHA hereunder during the 12-month period immediately preceding the event upon which liability is predicated. The warranties and remedies set forth above are exclusive and in lieu of all others, oral or written, express or implied. Licensee acknowledges that the forgoing limitation of remedies is a material condition of ESHA's willingness to enter into this Agreement, and that ESHA would not enter into this agreement but for such limitation.
20. Independent Parties. ESHA and Licensee agree that Licensee is an independent licensee and that the relationship created by this Agreement is not that of employer and employee, partnership, joint venture or franchise. Licensee further acknowledges that ESHA's Third Party Vendors are independent licensors and not partners or joint venture's. No independent party shall have the authority to bind or obligate any other party in any manner.
21. Remedies. In the event Licensee breaches or defaults upon any covenant, warranty, term or condition of this Agreement, ESHA may pursue any legal or equitable remedies available to it under the laws of the state of Oregon or the applicable laws of the United States. The parties agree that in the event of a breach of any of the covenants pertaining to ESHA's intellectual property rights or Confidential Information, such a breach will result in irreparable and continuing damage in an amount which is not readily ascertainable and for which there will be no adequate remedy at law. In the event of any breach of such covenants, ESHA shall be entitled to injunctive relief and such other and further relief, including damages, as may be provided by law.
22. Notice of Claims. You must notify ESHA in writing of any claim you have against ESHA within ninety (90) days following your knowledge of such claim or the claim shall be barred and you will have waived any right to proceed against ESHA on such claim. Nothing herein shall limit or preclude any statutory limitations on the assertion of claims.
23. Non-Waiver. The failure or delay of either party to require performance of, or to otherwise enforce, any condition or other provision of this Agreement shall not waive or otherwise limit that party's right to enforce, or pursue remedies for the breach of, any such provision or condition. No waiver by either party of any particular condition or provision of this Agreement, including this non-waiver provision, shall constitute a waiver or limitation on that party's right to enforce performance of, or pursue remedies for the breach of, any other condition or provision of this Agreement.
24. Successor Interests. This Agreement and the rights granted hereunder are not assignable or transferable by Licensee without the express written consent of ESHA, which shall not be unreasonably denied or delayed. Subject to this restriction, this Agreement is binding upon, and

shall inure to the benefit of, the successors, assigns and bankruptcy estates of each of the parties.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to, or application of, any conflict of law provisions.
26. Jurisdiction, Venue. The parties agree that any suit, action or arbitration proceeding arising out of or relating to this Agreement shall be brought in Multnomah County, Oregon, and the parties expressly consent to the personal jurisdiction over them of any state or federal court in Multnomah County, Oregon.
27. Attorney's Fees. If either party to this Agreement breaches any term of this Agreement, then the other party shall be entitled to recover all expenses of whatever form or nature, costs and attorney's fees reasonably incurred to enforce the terms of the Agreement, whether or not suit is filed, including such costs or fees as may be awarded in arbitration or by a court at trial or on appeal. In addition, in the event either party to this Agreement becomes a debtor subject to the United States Bankruptcy Code, the non-debtor party shall be entitled to recover any expenses, costs and fees, including attorney's fees, incurred in connection with enforcing its rights against the debtor party, whether those rights arise under this contract or involve matters arising solely under the Bankruptcy Code.
28. Severability. If any court of competent jurisdiction finds any term of this Agreement or of any other document or instrument referred to or contemplated in this Agreement, to be invalid or unenforceable, such determination shall not affect the validity and enforceability of the remainder of the Agreement, and the court shall enforce the Agreement in such a manner as to give substantial effect to the intent of the parties as expressed in the Agreement.
29. Paragraph Headings. All paragraph headings in this Agreement appear for convenience of reference and shall not affect the meaning or interpretation of the Agreement.
30. Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties, which expressly states the intent of the parties to modify or amend this Agreement.
31. Entire Agreement. This Agreement and the Purchase Agreement constitute the entire agreement between the parties pertaining to the subject matter of the Agreement, and supersede all prior discussions, negotiations, understandings, representations and agreements, whether oral or written. The Purchase Agreement shall, for all purposes, consist solely of the standard purchase documentation provided by ESHA to you. No terms or conditions in any purchase Agreement form, order acknowledgement or similar documentation provided by you, nor any amendments you make to ESHA's Purchase Agreement, shall be effective. All terms of this Agreement are contractual and not mere recitals.